

OPCC File 2023-24938

IN THE MATTER OF THE POLICE ACT, R.S.B.C. CHAPTER 367

AND

IN THE MATTER OF ALLEGATIONS OF MISCONDUCT AGAINST

CONSTABLE [REDACTED]

OF THE ABBOTSFORD POLICE DEPARTMENT

NOTICE OF THE ADJUDICATOR'S DECISION UPON REVIEW

TO:	Constable [REDACTED] c/o Abbotsford Police Department Professional Standards Section	Member
AND TO:	Chief Constable Colin Watson c/o Abbotsford Police Department Professional Standards Section	Chief Constable
AND TO:	Staff Sergeant [REDACTED] c/o Abbotsford Police Department Professional Standards Section	Investigator
AND TO:	Inspector [REDACTED] c/o Abbotsford Police Department Professional Standards Section	Discipline Authority
AND TO:	Mayor Ross Siemens c/o Abbotsford City Hall	Chair Police Board
AND TO:	Mr. Prabhu Rajan	Police Complaint Commissioner

ADJUDICATOR'S DECISION

Introduction

1. This is a review by a retired judge pursuant to s. 117 of the *Police Act*, R.S.B.C. 1996 Chapter 367 [the *Act*], regarding the alleged misconduct of the Member while on duty, working for the Abbotsford Police Department.
2. The allegations of misconduct stem from the Member's arrest of the same person [referred to as the "Affected Person" under the *Act*] on November 26, 2023, and again on December 29, 2023, on each occasion without a valid warrant, and the amount of force used by the Member in relation to the November 26, 2023 arrest.
3. Both of these arrests require consideration as misconduct by the Member as Abuses of Authority pursuant to s. 77(3)(a)(i) of the *Act*, insofar as that misconduct is defined as oppressive conduct towards a member of the public that constitutes oppressive conduct if a member makes an arrest intentionally or recklessly without good and sufficient cause.
4. Regarding the arrest on November 26, I will also consider whether the force that was used by the Member to effect the arrest of the Affected Person was necessary or amounted to an Abuse of Authority under s. 77(3)(a)(ii)(A) of the *Act*. The alleged force used by the Member included deploying oleoresin capsicum [OC] spray at the Affected Person while he was in the back seat of a vehicle; delivering closed-fist strikes to his face; delivering a further strike to his face while he was on the ground; and then a strike to his abdomen while he was handcuffed, apparently due to the Affected Person's reluctance to get fully into the back of the police vehicle.
5. After the Member had the Affected Person in custody, the Member was advised by his partner that there was no arrest warrant for the Affected Person. The Member reviewed the CPIC information again, and scrolling farther down, saw that the arrest

warrant was for another male linked to the same vehicle. The Member advised the Affected Person of his *Charter* rights in relation to a charge of Obstruction of a Police Officer engaged in the execution of his duty (s. 129 of the *Criminal Code*) and then released him. The Affected Person was then taken to hospital by the paramedics who had attended. He was seen at the hospital and was released from the hospital hours later. No charge of Obstruction was pursued by police at that time.

6. From the arrest on November 26, 2023, the Member also faces allegations of misconduct arising from his failure to report his use of OC spray and force upon the Affected Person, and also for failing to photograph his injuries.
7. Just over a month later, on December 29, 2023, the Member submitted a Report to Crown Counsel [RTCC], recommending that a charge of Obstruction be approved against the Affected Person arising from the arrest on November 26, 2023. On the same day, and before the Member had received a response from Crown Counsel in relation to the RTCC he had submitted, the Member arrested the Affected Person for Obstruction. The Affected Person was taken into custody and kept in custody until the matter of his release was dealt with. On the same day Crown Counsel declined to approve the Obstruction charge recommended by the Member and directed the release of the Affected Person.
8. Both arrests of the Affected Person on November 23, 2023 and his subsequent arrest on December 29, 2023 by the Member are the subject matter of this review.

The Applicable Statutory and Legal Requirements of a s. 117 Review

9. For those unfamiliar with the process, the *Act* under which this review takes place is a provincial statute that has been the subject of amendment and judicial review by the courts. Its goal is to integrate the interests of police officers, individual civilians, and in certain instances broader community interests, into a fair and just police complaint procedure.

10. Under the Act s. 117(1) gives the Commissioner the authority to appoint a retired judge to review the decision of a disciplinary authority when the Commissioner considers there is a reasonable basis to believe that the disciplinary authority's decision that the member or former member's conduct did not constitute misconduct is incorrect.

11. Section 117(1) also sets out the task for the reviewing retired judge, which is to:

- (a) review the investigating officer's report referred to in section 112 or 116, as the case may be, and the evidence and records referenced in that report;
- (b) make her or his own decision on the matter;
- (c) if subsection (9) of this section applies, exercise the powers and perform the duties of discipline authority in respect of the matter for the purposes of this Division. [Emphasis added.]

12. Section 117(9), referred to immediately above, is engaged if, on review, the retired judge considers the police conduct at issue "appears to constitute misconduct". If this occurs:

[...] the retired judge becomes the discipline authority in respect of the matter and must convene a discipline proceeding, unless s. 120(16) [a prehearing conference] applies. [Emphasis added.]

13. If the retired judge decides that they are unable to agree with the discipline authority's finding of no misconduct, and considers the police conduct at issue to constitute apparent misconduct, s. 117(8)(d) contains the test to be applied in reaching such a determination. It requires the retired judge to include in the notification their determination as follows:

- (d) if subsection (9) applies, the retired judge's determination as to the following:
 - (i) whether or not, in relation to each allegation of misconduct considered by the retired judge, the evidence referenced in the report appears sufficient to substantiate the allegation and require the taking of disciplinary or corrective measures;
 - (ii) whether or not a prehearing conference will be offered to the member or former member under section 120;

(iii) the range of disciplinary or corrective measures being considered by the retired judge in the case...[Emphasis added.]

14. Thus, as specified in s. 117(8), the test to be applied by the retired judge on a s. 117 review is to determine whether the evidence “appears sufficient to substantiate the allegation of misconduct and require[s] the taking of disciplinary or corrective measures”. A finding that the evidence appears sufficient to substantiate the alleged misconduct places the retired judge in the role of disciplinary authority, and the complaint proceeds on that basis.

15. This articulation of the task of the retired judge on a s. 117 review, when contrasted with the wording in s. 117(1)(b) that he or she makes their “own decision” on the matter (s. 117(1)(b)), has caused some confusion. This is discussed in *Scott v. British Columbia (The Police Complaint Commissioner)*, 2016 BCSC 1970. In that decision Mr. Justice Affleck addressed this issue (at para. 30):

In my opinion the legislature did not intend the retired judge, whose ultimate role could include presiding over a disciplinary hearing involving the very person whose conduct he had already determined was improper, nevertheless could use language, before a hearing had taken place, that on any reasonable reading left no doubt in the mind of the petitioner that the retired judge had already made up his mind that the petitioner was guilty of the misconduct alleged.

16. Therefore, it is important to note that while s.117(1)(b) directs the retired judge to come to their own decision, it is incorrect for the judge’s reasons to stray into a conclusive analysis of the evidence such that they appear to have pre-judged the case. Nor should the reasons contain language indicative of bias. This is because when there is a finding that there appears to be sufficient evidence to substantiate the incident of alleged police misconduct, the s. 117 review may well be preliminary to a later hearing in which the retired judge becomes the discipline authority. This is in sharp contrast to a finding by the retired judge that the allegations of alleged misconduct are not substantiated, in which case the judge’s decision is final and conclusive (s. 117(11)), and the matter proceeds no further.

Background to this Review

17. On March 12, 2024, the former Police Complaint Commissioner ordered an investigation into the conduct of the Member and Cst. [REDACTED] who arrived on the scene on November 26, 2023, to assist the Member (and Cst. [REDACTED] with the arrest of the Affected Person, and the force associated with it.

18. The investigation arose as a result of information received from the Abbotsford Police Department [APD] regarding this incident, as opposed to a complaint from the Affected Person. Specifically, on November 27, 2023, the APD Professional Standards Section submitted the report required by s. 89(1) of the Act if a person suffers a reportable injury in the care or custody of a member of a municipal police department. On March 12, 2024, after a review of the mandatory reporting, the Commissioner ordered that an investigation into the November 26, 2023 arrest pursuant to s. 93(1). He also ordered “that the investigation include any other potential misconduct, or attempted misconduct, that may have occurred in relation to this incident.”

19. Staff Sergeant [REDACTED], a Professional Standards Investigator with the APD, conducted the investigation. During the investigation the Investigator identified additional allegations of misconduct by the Member, namely in relation to the arrest on November 26: failing to photograph the Affected Person’s injuries, failing to notify a supervisor that oleoresin capsicum [OC] spray had been deployed, and failing to take reasonable steps to confirm whether the Affected Person was the subject of an outstanding warrant before making the arrest. The Investigator identified the Member’s arrest of the Affected Person on December 29, 2023, without a warrant as an additional allegation of Abuse of Authority (s. 77(3)(a)(i)).

20. The Investigator submitted the Final Investigation Report [FIR] to Inspector [REDACTED] [REDACTED] the Discipline Authority [DA] and the Office of the Police Complaint

Commissioner [OPCC] on October 11, 2024. The FIR was rejected by the OPCC, and the OPCC directed that further investigative steps be taken. On February 14, 2025, the Investigator resubmitted the FIR as updated to the DA and to the OPCC.

21. On March 4, 2025, the DA issued his decision pursuant to s. 112 of the *Act*. In a s. 117 review the retired judge is not provided with the DA's reasons for their decision. However, as occurred here, a summary of the findings is typically included in the Notice of Appointment of Retired Judge.
22. In relation to the Member, the DA determined that Abuse of Authority pursuant to s. 77(3)(a)(ii)(A) did appear to be substantiated as it related to the strikes the Member delivered to the Affected Person during the November 26th arrest. With regard to a further allegation of Abuse of Authority pursuant to s. 77(3)(m)(ii) of the *Act*, that the Member intentionally or recklessly made an arrest without good and sufficient cause, also in relation to the November 26th arrest, the DA concluded that allegation did not appear to be substantiated. Lastly, the DA determined the allegation of Neglect of Duty pursuant to s. 77(3)(m)(ii) of the *Act*, pertaining to the Member's failure to photograph the injuries of the Affected Person on the same date, without good or sufficient cause, did appear to be substantiated.
23. When Mr. Prabhu Rajan, the current Police Complaint Commissioner [the Commissioner], reviewed the DA's decision pursuant to s. 117(1) of the *Act*, he did not consider the DA's findings in relation to Cst. [REDACTED] which dismissed allegations of misconduct against her, to be incorrect. She was the officer who arrived to assist the Member in arresting the Affected Person on November 26, 2023.
24. However, with regard to the Member, the Commissioner considered that he had a reasonable basis to believe certain findings of the DA were incorrect. The Commissioner also considered that the Member's conduct in deciding to proceed with the arrest of the Affected Person on December 29, 2023, for the alleged criminal charge of

Obstruction of a Police Officer relating to the November 26, 2023 warrantless arrest, required review as it had not be analyzed by the DA as potential misconduct.

Allegations of Misconduct by the Member Identified in this Review

The Statutory Provision

25. Section 77(3) of the *Act* contains the following provisions:

Subject to subsection (4), any of the conduct described in the following paragraphs constitutes a disciplinary breach of public trust, when committed by a member:

- (a) “abuse of authority”, which is oppressive conduct towards a member of the public, including, without limitation,
 - (i) intentionally or recklessly making an arrest without good and sufficient cause,
 - (ii) in the performance, or purported performance, of duties, intentionally or recklessly
 - (A) using unnecessary force on any person, or
 - (B) detaining or searching any person without good and sufficient grounds, or [...]
- (m) “neglect of duty”, which is neglecting, without good or sufficient cause to do any of the following:
 - [...]
 - (ii) promptly and diligently do anything that it is one’s duty as a member to do;
 - [...]

26. Section 77(4) of the *Act* states:

It is not a disciplinary breach of public trust for a member to engage in conduct that is necessary in the proper performance of authorized police work.

Description of Each Misconduct Allegation

27. In accordance with my statutory obligation that arises in s. 117(8)(c), I find the following allegations of misconduct by the Member are to be considered in this Review:

- I. ***Abuse of Authority***, constituting oppressive conduct towards the Affected Person, by the Member **intentionally or recklessly making an arrest of**

the Affected Person without good or sufficient cause on November 26, 2023 (s. 77(3)(a)(i));

- II. ***Abuse of Authority***, constituting oppressive conduct towards the Affected Person, by the Member, in the performance of his duties, **intentionally or recklessly, using unnecessary force when he arrested the Affected Person on November 26, 2023 (s. 77(3)(a)(ii)(A))**;
- III. ***Neglect of Duty***, by the Member, on November 26, 2023, for his **failure to notify his supervisor, without good and sufficient cause, as soon as practicable of his use of force in relation to the Affected Person** by way of strikes to the head and body of the Affected Person, and his deployment of OC spray to subdue the Affected Person as required by the APD Policy and Procedure on Use of Force Operations II.H.010, p. 5, para. 33;
- IV. ***Neglect of Duty***, by the Member, on November 26, 2023, for his **failure to photograph the injuries of the Affected Person sustained in the arrest**, in accordance with his duty to do so as set out in the APD Policy and Procedure on Use of Force Operations II.H.010, p. 5, para. 34; and
- V. ***Abuse of Authority***, constituting oppressive conduct towards the Affected Person, by the Member, **intentionally or recklessly making an arrest of the Affected Person without good or sufficient cause on December 29, 2023, for the alleged offence of Obstruction of a Police Officer from the prior arrest on November 26, 2023 (s.77(3)(a)(i))**.

The Evidence

28. There is a significant amount of information contained in the FIR, which was updated by the investigator following a Direction for Further Investigation from the OPCC and

submitted on February 14, 2025. Summarized in the FIR and contained in the Appendices are the police statements of the Member, Cst. [REDACTED] Cst. [REDACTED] and Cst. [REDACTED] in relation to the arrest of the Affected Person on November 26, 2023. Also included are the audio-recorded statements of the Member, Cst. [REDACTED] and Cst. [REDACTED]. There are also the summaries and audio-recorded statements of a number of other APS members who had knowledge of aspects of arrests of the Affected Person on November 26, 2023, and December 29, 2023.

29. My review has included many forms and records, police notes, the MDT/CAD records and Radio Transmissions that pertain to this matter, statements of APS policies, the brief notes of the intake physician in relation to the Affected Person's attendance at the Abbotsford General Hospital on November 26, 2023, the jail booking records for the Affected Person's admission after his arrest on December 29, 2023, and other detailed records about the two incidents of arrest, the documents and analysis of the investigation contained in the FIR, and the follow up investigation.

The Plan for this Review

30. Given the broad scope of this review, the amount of evidence I have reviewed and considered, as well as the number of allegations of misconduct facing the Member I will deal first with the four allegations of misconduct set out above that arise from the Member's conduct on November 26, 2023, when he arrested the Affected Person without a warrant. I will set out the relevant evidence. Then I will analyze the elements of the allegations of misconduct in light of the evidence and set out my findings.
31. Following that, I will consider the last allegation of misconduct described above as V. (in para. 29), in relation to the Member, that just over a month later on December 29, 2023, he intentionally or recklessly, arrested the Affected Person without good and sufficient cause. In relation to that allegation, I will briefly set out the relevant evidence. Then I will analyze the elements of the alleged misconduct in light of the evidence and set out my findings.

32. In analyzing these allegations, I will consider the alleged instances of misconduct by the Member in light of the prescribed test contained in s. 117(8) to be applied by the retired judge on a s. 117 review, which is whether the evidence “appears sufficient to substantiate the allegation of misconduct and require[s] the taking of disciplinary or corrective measures”. Then I will deal with any ancillary matters that arise and conclude with a brief summary of my findings.

First Arrest on November 26, 2023

The Member’s Police Statement

33. In his police statement dated November 26, 2023, the Member stated that he was on patrol with Cst. [REDACTED] wearing plain clothes and driving a covert police vehicle. At 0615 hours they observed a vehicle parked roadside near a homeless camp on [REDACTED] Avenue and queried its license plate on CPIC. The information he received back was that it was a “pointer” vehicle associated to the named Affected Person as its registered owner. The Member stated [incorrectly] that this gave him reasonable grounds to believe that the Affected Person had a warrant for driving while disqualified.

34. The Member approached the vehicle and could see that a man was sleeping inside. After several knocks on the door the person [referring to the Affected Person] arose and was immediately confrontational with the police. The Member recognized this person from previous encounters. (Later the Member indicated that this was not the case, and he recognized the person from a mug shot.)

35. The Member showed him the police markings on his vest and told him that he was under arrest for his warrant. The person refused to get out of the vehicle or show his hands when told to do so. The person continued to scream at the police from the back of the car and tell them to “fuck off”. The Member deployed OC spray into the face of this person, which was not effective. The person wiped the spray from his face. He

continued to tell police that he was not coming out and covered himself with a blanket. The Member could then see the person's arms moving around under the blanket. Due to the person's aggressive behaviour and history of violence, the Member believed that the person could have access to weapons or tools that could be used to harm him or his partner, and with the person hiding his arms, if he did present a weapon, the Member would not have time to react before the person had a chance to use any weapon he may have had. This, along with the person's aggressive behaviour caused the Member to believe he could be assaulted. He controlled the person's arms with one hand while he punched the person in the face several times. Again, the Member asked the person to show his hands and the person started to try to push the Member away with a free hand, which the Member answered with more strikes.

36. The Member stated that other members assisted in extracting the person from the other side of the vehicle onto the ground. Once on the ground the person "turtled" and refused to give up his arms. The Member delivered one more strike to the person's face and was then able to pry his right arm out from underneath him. The person was handcuffed and walked back to a marked police car where he remained aggressive and yelling, not allowing the members to talk to him. The Member pushed the person into the cage of the police car and then the person propped his leg on the inside of the open door. The Member was with another member standing directly in front of the person, and the Member feared that the person would be in a good position to kick him with his leg. The Member punched the person once in the solar plexus of his abdomen, which "knocked the wind" out of the person. With this the Member gained enough compliance that the person brought his leg inside the car and was able to be secured. Emergency Health Services was called for the OC effects and the minor scrapes to the person's face. The person complained of not being able to breath while also screaming insults. While the person was read his 10(a) and (b) Charter rights, he continued to scream at the police the entire time, and did not acknowledge what was read to him.

EHS attended and transported the person to the Abbotsford Regional Hospital at his request.

37. Later, on November 26, 2023, the Member filed a follow up note that he had called the hospital emergency at 1100 hrs and was advised that the person had seen a doctor and had been discharged shortly thereafter.

38. On July 25, 2024, the Investigator sent the Member an email asking him to clarify his identification of the person in terms of the Member's reference to recognizing the person from previous "encounters" in his police statement, to which the Member responded that he had incorrectly stated "encounters", as he had meant to say that he recognized the person from a PRIME mugshot as he described in his audio statement. The Member clarified that he had no face-to-face contact with the person prior to November 26, 2023.

The Vehicle Query by the Member at 0618 hrs

39. Of particular note is the screen shot of the CAD – Query MDT Log in relation to the Member's query regarding the vehicle parked roadside at 61826 (ie. at 6:18 am on November 26, 2023). It depicts what the Member viewed prior to the arrest of the Affected Person. The Member has indicated that initially when he checked the information he received in relation to his query regarding the licence plate of the vehicle, he did not scroll down far enough to see that the warrant associated with the "pointer" vehicle was not for the registered owner who is the Affected Person.

40. That screen shot as captured by a photograph makes no reference anywhere to the Affected Person being anything other than the registered owner of the vehicle. In its upper portion it refers to the vehicle as a "pointer vehicle" (**POINTER VEHICLE**), which I understand means it is believed to be associated to a person of interest to the police. In its upper portion there is no reference to any person being subject to being wanted on a warrant. It is its lower portion that refers to another male as associated to

(++ASSOCIATED TO++) and indicates under that person's name that they are
 "***WANTED** 1" and "***ACCUSED**1".

Radio Contact on November 26, 2023, between Dispatch and Cst. [REDACTED]

41. I have reviewed this radio transmission between Abbotsford Dispatch [AD] and the Member's partner, Cst. [REDACTED] [REDACTED] which appears to have occurred just after the Member and Cst. [REDACTED] assisted by Cst. [REDACTED] [REDACTED] have taken the Affected Person into custody. "UK" is unknown. No time is noted for these transmissions. I will summarize what I am able to discern as follows:

JG: We are just out on [REDACTED] with the Affected Person (named), he's got a warrant. Just wondering if we can get a transport unit, please.

EC: radios in "Six I'm pretty close by.

AD: Yeah, I think I found [Affected Person's first name] here. I'm not seeing any warrant on his two-nine though. Do you know if it's like brand new or just on Justin?

JG: Uh, no we ran it, it's showing in the system. Uh, his plate is [REDACTED].

AD: Okay. I have it. Wrong.

JG: Should be for drive while prohibited and [unintelligible]

AD: 'Kay, I see the warrant you're looking at. I think it's gonna be [name of a male not the Affected Person] who's associated to the vehicle as a pointer.

UK: Copy.

JG: Three-five one in custody.

AD: Copy, one in custody.

JG: And three-five we'll take a file for obstruction.

AD: ten-four.

JG: And we'll take a Jack's [tow truck] her too please.

The Subject Behaviour Officer Response Form [SBOR] completed by the Member

42. In the SBOR completed by the Member on the same day, the Member noted that the person was known to police as violent and had previously been charged with robbery. He classified the person's behaviour as "active resistant". The Member checked the following specific behaviours in relation to the person's behaviour: 1000 yard stare/glaring; tensed/clenched fists; turtle/refuse to show hands; non-compliant; yelling/swearing; pull away/att. flee; attempt/strike person; agitated/erratic;

struggle/push; and reach for weapon. The Member also ticked the box for officer-initiated struggle that went to the ground, and the box for communication described as “you are under arrest, show me your hands, get out of the car.” The Member checked that he had used physical control stun/strike and that it was effective. He did not indicate the number of strikes he delivered to the person. The Member also identified that he had used OC spray from a distance of 0-2 meters and that it was ineffective.

Member’s Partner’s Police Statement

43. In Cst. [REDACTED] statement he provided many of the same details as the Member. He indicated that he knew the Affected Person from multiple police interactions and had been told several days earlier by Cst. [REDACTED] that there was a warrant out for his arrest. He recalled that the Member queried the Affected Person on CPIC and that it appeared to show there was a warrant for his arrest.

The Affected Person’s Statement

44. The affected person provided an audio-recorded interview to Sgt. [REDACTED] of the APS Professional Standards Section on May 2, 2024. Sgt. [REDACTED] inquired about the dealings this person had with police on November 26, 2023, while he was inside his vehicle. The person recalled an officer opening the door to his vehicle stating that he had a warrant. He was just waking up as he had been sleeping in his car, and believed it to have been between 4 and 5 in the morning. It was still dark out. He asked the officer to see the warrant, to which the officer responded that he did not have to show it to him. The officer told the person that he was under arrest and the person asked what the offence was. The officer responded that he had a warrant and the person again asked to see the warrant. The person believed that the officer then “got mad and flustered.” The officer opened the front door [of his vehicle] and sprayed him with pepper spray. The person recalled grabbing his eyes in pain and the officer moving around to the other door of the vehicle and began to deliver blows to his head and around his chest area. The person recalls another door in the vehicle being opened and being dragged out of the vehicle by another officer. The person recalled that he was still wrapped in his blanket

and recalled the blanket possibly muffling his reaction to the arrest and working as a “buffer”, preventing the blows from the officer from leaving a mark. The person referred to this as “a blanket party”. The person recalled receiving blows prior to being handcuffed and additional strikes after he was handcuffed. The person believed that he was handcuffed prior to being pulled from his car but later clarified that the police were trying to handcuff him and did not secure the handcuffs on him until he was on the ground outside his vehicle. The person recalled that once the handcuffs were applied the officers stopped hitting him and helped him up. He recalled that the officer with the blond hair and the beady eyes was the officer who delivered the blows to him. The person recalled 10-12 blows. The person recalled being struck in the chest while wearing handcuffs. He believed that he was seated in the back of the police car when he received this blow. He recalled that the blows he received were with a closed fist. The person stated that after the “beating” there was an officer waiting in the car to transport him. He recalled bleeding from his face and from being handcuffed. Once he was in the back of the police car the person requested that an ambulance be called as he felt that he required medical treatment. An ambulance attended and transported him to hospital. He recalled being searched, handcuffed, and released about 10 minutes later.

45. The person recalled a paramedic stating that he would be willing to provide a witness statement, and that the paramedic’s name was [REDACTED]. The person said that he told the paramedic that he did not plan to file a complaint, although then he said that he would call the police and make a complaint. The person stated that maybe the police officer was a rookie and made a mistake. He also told the paramedic that no one deserved that kind of treatment, especially “a senior citizen.”
46. In the interview the person also said that he has no history of violence on his record and did not understand why the officer chose that method to subdue him. He stated that he was no threat to the officer, and they could have shown him the warrant. He remained at the hospital for the morning of November 26, 2023.

47. The person stated that he did call the police and register a complaint but never received any follow up.

48. The person also stated in the interview that he believed there was a concerted effort to find “flies” on him, stating that he has been searched a dozen times, “but ain’t no flies on me”. He stated that his car towed by the police many times on many days, and believed that he was being targeted by the head of the drug force. He stated that all the incidents he has had with the police mesh into each other, but that he did recall this arrest on November 26, 2023, in particular. He said that he tries to follow the law as best he could and also that the officer had blond hair and “beady eyes”. He recalled seeing this officer in plain clothes and in uniform. He said he asked the officer for his name and badge number, but the officer refused to provide the information.

Paramedic [REDACTED] Report on the Injuries of the Affected Person

49. Mr. [REDACTED] report indicated that when he attended [REDACTED] Avenue on November 23, 2023, at the request of the APD, he noted that the Affected Person had a facial injury and was complaining of an injury to his left side and right elbow. Mr. [REDACTED] noted his injuries: a small laceration on his right arm; a complaint of pain on his left ear, minor swelling noted; blood on his face that had stopped bleeding; and he stated that he was having trouble breathing through his nose. The Affected Person was able to walk with Mr. [REDACTED] to the ambulance and was then transported to hospital.

Cst [REDACTED]

50. On May 13, 2024, Cst. [REDACTED] provided an audio-statement regarding information that she provided to Cst. [REDACTED] prior to the arrest of the Affected Person on November 26, 2023. She recalled running his licence plate and believing that he had an outstanding arrest warrant. She recalled having a conversation with Cst. [REDACTED] in which she told him that “it looked like” the Affected Person had a warrant on CPIC. She had seen his

vehicle parked on the roadway and ran his vehicle plates on CPIC. However, she did not arrest him as he was not there.

Analysis and Findings Regarding November 26, 2023 Arrest

I. Abuse of Authority, by the Member intentionally or recklessly making an arrest of the Affected Person without good or sufficient cause

51. In my review of this arrest, I note the following in relation to this allegation of misconduct:

- The Affected Person was sleeping in the back seat of a car for which he was the registered owner.
- It was 6:15 am on a dark late November morning in Abbotsford.
- The Member and his partner, Cst. [REDACTED] were in an unmarked vehicle wearing civilian clothes.
- They drove to where they knew the Affected Person's car was parked.
- They went there purposefully to "action" the information they had received about an outstanding warrant for the Affected Person.
- It appears that the Affected Person's vehicle was parked in the vicinity of the Homeless Camp in Abbotsford.
- In his statement the Member referred to the person in the car as sleeping.
- The Member queried the licence plate for the vehicle on CPIC and received a response, he read it. The part he read initially referred to the Affected Person's vehicle being a "pointer" vehicle in capital letters and the Affected Person was only referred to as the "RO".
- I note that in the portion the Member said he looked at first, there is no mention of there being a warrant for the Affected Person.
- Apparently, the Member assumed a warrant existed for the Affected Person based on his incomplete review of the CPIC entry and his partner having been told by Cst. [REDACTED] that "looked like" there was a warrant for the arrest of the Affected Person.

- The Member and his partner moved to arrest the Affected Person.
- In fact, there was no warrant for his arrest.
- The Affected Person apparently had a record for being a Prohibited Driver, although it is unclear whether he was in fact prohibited at that time. In any event, he was not driving and was not in the front seat of his vehicle.
- His vehicle had been towed previously on a number of occasions at the direction of the police.
- He was apparently well known to the police, in particular the Member's partner.
- The Affected Person resisted the arrest. Force was used upon him by way of strikes from the Member and he was sprayed with OC spray before he was subdued and handcuffed. He was struck by the Member after he was handcuffed.
- Once the Member's partner radioed for assistance in transporting the Affected Person and to order a tow truck, the person on dispatch checked the information relating to the "warrant" and quickly observed that it was not for the Affected Person but for another male. At this point the Member's partner stated to dispatch that the Affected Person was being charged with obstruction.
- The Affected Person was 70 years old.
- It is unclear if the Affected Person was ever told that there was no warrant for his arrest. He was provided his *Charter* rights and advised he would be charged with Obstruction prior to being taken to the hospital at his request by the paramedics.
- According to the Member and his partner, the Affected Person remained uncooperative and yelled throughout their dealings with him.

52. The Member's claim that his initial review of the CPIC entry was incomplete, and then after the arrest, he scrolled down further and saw that the warrant referred to was for

another person, does not appear to assist him. The short CPIC entry made no reference to any warrant in relation to the Affected Person. It only referred to the Affected Person as the “RO” or Registered Owner of the vehicle, with the only reference at the end regarding a person as “Wanted” and “Accused” clearly referring to someone else. Apparently, after seeing the reference to the Affected Person, the Member decided there was a warrant and set about arresting the Affected Person.

53. The Supreme Court of Canada decision in *Peracomo v. Telus Communications Co.*, 2014 SCC 29, appears to be the leading case on the meaning of “wilful misconduct” and “recklessness”. The Court stated the following:

[57] In other contexts, “wilful misconduct” has been defined as “doing something which is wrong knowing it to be wrong or with reckless indifference”; “recklessness” in this context means “an awareness of the duty to act or a subjective recklessness as to the existence of the duty” [Citations omitted].
[...]

[58] These formulations capture the essence of wilful conduct as including not only intentional wrongdoing but also conduct exhibiting reckless indifference in the face of a duty to know. [...]

[Emphasis added.]

54. It appears that the Member was reckless in not thoroughly checking to see if there was an outstanding warrant for the Affected Person. This would include, in these circumstances, reading the CPIC entry and, if unsure of what it stated or what was meant, taking steps to clarify it. There was no immediate hurry and no risk of harm either to the police or to the public given that the Affected Person was sleeping in the back seat of his vehicle. When the Member’s partner radioed to Abbotsford Dispatch after they had arrested the Affected Person, the dispatcher very quickly determined that there was no warrant for the person they had arrested. Lawful authority to arrest is inexorably tied to a police officer’s right to use force to affect the arrest.

55. To conclude this part of the analysis, I find there is sufficient evidence that the Member was reckless in his arrest of the Affected Person by not taking routine steps to check the full CPIC entry and make any necessary inquiries. In addition, given no other pressing circumstances at the time, including no risk that the Affected Person was about to commit an offence, flee, or pose any sort of risk to the police officers themselves, it cannot be said there was “good and sufficient cause” for the Member to act as he did. To fail to check to ensure there is in fact a valid warrant before executing it and then arrest a member of the public as occurred here appears to be “oppressive conduct” as the phrase is used in s. 77(3)(a) of the *Act*. Therefore, the evidence referenced in the FIR and Appendices appear sufficient to substantiate the allegation and require the taking of disciplinary or corrective measures.

II. *Abuse of Authority, by the Member, in the performance of his duties, intentionally or recklessly using unnecessary force in his arrest of the Affected Person*

56. Section 25 of the *Criminal Code* is a useful starting point in this analysis. The leading case in relation to this issue in the criminal law context is *R. v. Nasogaluak*, 2010 SCC 6. While it is “unnecessary force” in the police discipline context that is the issue here, the comments of the Supreme Court of Canada are very instructive, in so far as they illustrate the interrelationship between a police officer’s right to use force to affect an arrest and the lawfulness of an arrest. Expressed in another way, the right for the police to use force is circumscribed by the law.

57. In discussing the legal standard regarding the police use of force and when it may be considered excessive, the Court considered the relevant portions of s. 25 of the *Criminal Code* as follows:

[32] The Crown emphasized the issue of excessive force in its submissions to this Court, arguing strenuously that the police officers had not abused their authority or inflicted unnecessary injuries on Mr. Nasogaluak. But police officers do not have an unlimited power to inflict harm on a person in the course of their duties. While, at times, the police may have to resort to force in order to complete an arrest or prevent an offender from escaping police custody, the allowable degree of force to be used remains constrained by the

principles of proportionality, necessity and reasonableness. Courts must guard against the illegitimate use of power by the police against members of our society, given its grave consequences.

[33] The legal constraints on a police officer's use of force are deeply rooted in our common law tradition and are enshrined in the *Criminal Code*. This case engages s. 25 of the *Code*, the relevant portions of which are reproduced below:

25. (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law

...

(b) as a peace officer or public officer,

...

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

...

(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

(a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;

(b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant;

(c) the person to be arrested takes flight to avoid arrest;

(d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and

(e) the flight cannot be prevented by reasonable means in a less violent manner.

[34] Section 25(1) essentially provides that a police officer is justified in using force to effect a lawful arrest, provided that he or she acted on reasonable and probable grounds and used only as much force as was necessary in the

circumstances. That is not the end of the matter. Section 25(3) also prohibits a police officer from using a greater degree of force, i.e. that which is intended or likely to cause death or grievous bodily harm, unless he or she believes that it is necessary to protect him- or herself, or another person under his or her protection, from death or grievous bodily harm. The officer's belief must be objectively reasonable. This means that the use of force under s. 25(3) is to be judged on a subjective-objective basis (*Chartier v. Greaves*, [2001] O.J. No. 634 (QL) (S.C.J.), at para. 59). If force of that degree is used to prevent a suspect from fleeing to avoid a lawful arrest, then it is justified under s. 25(4), subject to the limitations described above and to the requirement that the flight could not reasonably have been prevented in a less violent manner.

[35] Police actions should not be judged against a standard of perfection. It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies. Their actions should be judged in light of these exigent circumstances. As Anderson J.A. explained in *R. v. Bottrell* (1981), 60 C.C.C. (2d) 211 (B.C.C.A.):

In determining whether the amount of force used by the officer was necessary the jury must have regard to the circumstances as they existed at the time the force was used. They should have been directed that the appellant could not be expected to measure the force used with exactitude. [p. 218]

58. Keeping in mind the subjective/objective nature of the test articulated in *Chartier v.*

Greaves referenced above in the context of s. 25 of the *Code*, I turn now to the decision of Adjudicator Baird Ellan, *In the Matter of a Public Hearing against Constable Tiwana of the Vancouver Police Department*, PH File No, 2014-2, OPCC File No. 2012-7819, where she sets out the framework for analysis for the misconduct of abuse of authority by intentionally or recklessly using unnecessary force under s. 77(3)(a)(ii)(A) of the *Act*. It is:

- The officer's use of force was objectively unnecessary; and
 - i. The officer did not subjectively believe the force was necessary;
 - ii. The officer subjectively believed the force was excessive; or
 - iii. The officer subjectively believed the force was necessary and not excessive, but this belief was not reasonable.

59. When the Affected Person did not follow the Member's direction to get out of the car and show his hands the Member sprayed him at a range of 0-2 meters while he was in the back seat of his car wrapped in a blanket. The Member considered the Affected Person to be behaving very aggressively, shouting, and continuing to refuse direction. The Member expressed a concern that if the Affected Person did not show his hands he might have a weapon under the blanket that he could produce quickly and use to harm the Member or his partner. While still in the vehicle the Member controlled the Affected Person's arm with one of his hands and used his other hand to punch the Affected Person several times in the face. The Member stated that again he asked to see the Affected Person's hand and the person started to try to push the Member away. The Member said he then delivered more strikes to the Affected Person. Once pulled out of the car the Affected Person "turtled", apparently to avoid being handcuffed. The Member delivered one more strike to the face of the Affected Person and at that point the person stopped resisting. He was handcuffed and put in the "cage" in the back of a police vehicle. The Affected Person resisted the Member closing the door by propping it open with his leg. The Member felt that he and his partner were at risk of being kicked so he struck the Affected Person once hard in the solar plexus.

60. The Affected Person provided the statement I have included to the Investigator. His account is generally confirmative of the Member's account. He described asking to see the warrant for his arrest and the Member told him to get out of the car. He made repeated requests to the Member to see the warrant that the Member did not produce. The Affected Person said that his asking to see the warrant seem to fluster and irritate the Member. That was when the Member opened the door and OC sprayed him. This cause pain in the Affected Person's eyes. He said the Member then moved to the other door and started to deliver blows to his head and chest area. Then another door opened, and another officer dragged him out of the car and onto the ground.

While on the ground he continued to be struck. Once he was handcuffed he was helped to his feet. He then described being struck in the chest while handcuffed and sitting in the police vehicle. He said the blows he received were delivered with a closed fist. He asked to go to the hospital because of his injuries, which included bleeding on his face and from being handcuffed. He was checked out at the hospital and released about 11 am the same day.

61. I have considerable difficulty with the level of force that the Member employed from the outset to deal with the Affected Person. There appears to have been no effort by the Member to deal with this arrest from the outset with anything other than a considerable amount of force.

62. However, I am also mindful of the risks that police officers face in such circumstances and of the caution articulated in *Nasogaluak* at para. 35:

Police actions should not be judged against a standard of perfection. It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies.

63. Given that the arrest was without a warrant and unlawful all of force used by the Member is objectively unnecessary. The test requires that I also consider the Member's subjective views and not simply make an objective assessment. Implicit in his statement and his conduct it that the Member's subjective belief was that all the force he used, including the deployment of the OC spray and the blows he delivered was necessary, and not excessive.

64. Keeping in mind my role in this s. 117 review is to consider whether the evidence before me "appears to be sufficient to substantiate the allegation" I find that the Member's use of force became objectively unnecessary at the point he struck the Affected Person in the solar plexus with what was likely a closed fist. This occurred while the Affected Person while he was handcuffed and seated in the police vehicle.

The Affected Person presented little risk of harm to either office at that time. The Member and his partner were free to move about to avoid any risk of being kicked, which was the Member's concern. He was handcuffed and in custody. At that time the Affected Person was soon to be released into the care of the paramedics.

65. I also find for the purposes of this review that the Member's subjective belief that this action was necessary and not excessive is unreasonable. It is this blow, and only this use of force, for which sufficient evidence exists to substantiate a finding that the Member's conduct in this regard was an intentional application of unnecessary force on the Affected Person.

66. Therefore, I find that the allegation of abuse of authority by the Member's intentional use of unnecessary force in delivering this blow to the Affected Person is substantiated on this review.

III. *Neglect of Duty*, by the Member for failure to notify his supervisor, without good and sufficient cause, as soon as practicable of his use of force in relation to the Affected Person, by strikes to his person and the deployment of OC spray to subdue to the Affected Person (s. 77(3)(m))

67. The APD Policy and Procedure on Use of Force Operations requires that the Member who applies force to a subject notify their supervisor as soon as practicable. The Member has stated that he did not notify a supervisor of either the physical strikes he applied to the Affected Person, or the deployment of OC spray.

68. The evidence indicates that the Member was re-certified in Use of Force, including the use of OC spray and Crisis Intervention and De-escalation on March 14, 2023. Informing a supervisor in such circumstances is part of the curriculum and instruction during Use of Force recertification.

69. By failing to notify his supervisor of the use of force while taking the Affected Person into custody the Member was arguably neglectful by not promptly and diligently what he was required to do.
70. However, the APS Use of Force Report is to be completed within 48 hours where there is: (a) use of physical control-soft, if an injury occurred to either the person or the officer from an application of that force; or (b) use of physical control-hard.
71. It is the position of the Member that he complied with this policy as he completed his SBOR report within an hour of using force on the Affected Person, and as such remains within the requirement of the policy that he notify a supervisor "as soon as practicable". With regard to "good and sufficient cause", the Member's position is that as the Affected Person was only in custody for a few minutes prior to the EHS paramedics transporting him to hospital, his injuries did not require the attendance of the supervisor at the scene. To comply with that requirement would have delayed the Affected Person being taken to hospital.
72. The OC spray policy of the APD requires an officer who has deployed OC spray to do a number of things when the individual is controlled. Included is to tell the individual that they have been sprayed with OC spray and its effects are short term, and as soon as practicable, allow the individual to decontaminate using fresh cool water. There is no evidence that the Member either did or did not do these things. I note the time that the Affected Person remained in custody was short and that the EHS paramedics attended and may reasonably be expected to have address the Affected Person's discomfort in this regard.
73. The policy also requires that a supervisor will attend where OC spray has been deployed and will ensure appropriate medical care is provided. A supervisor did not attend in this instance and to have kept the Affected Person longer at the scene would have delayed his attendance at hospital.

74. It is not clear on the evidence that a SBOR report filed by the Member is compliance with the Use of Force requirement that the Member file a report regarding the use of force employed within 48 hours.

75. As such, I find that I am not satisfied on a balance of probabilities that the Member is in breach of this requirement. Also in these particular circumstances, the transport to hospital of the Affected Person alleviated the need for a supervisor to attend the scene as “good and sufficient cause”.

76. For these reasons I find this allegation of misconduct to be unsubstantiated.

IV. *Neglect of Duty, by the Member for his failure to photograph the injuries of the Affected Person sustained in the arrest in accordance with his duty to do so as set out in the APD Policy and Procedure on Use of Force Operations II.H.)10, p. 5, para. 34*

77. In relation to this alleged misconduct, the Member has admitted that he failed to do this. It is clear that the policy referred to above required this. There is no evidence that the Member was unable to comply with this requirement for any reason. In view of the circumstances of the arrest and the amount of force used, it is a duty that the Member ought to have met.

78. In these circumstances I find the evidence appears to substantiate this allegation.

The Second Arrest on December 29, 2023

The Member's Statement

79. In his interview on September 17, 2024, part of the follow up ordered by OPCC analyst [REDACTED], the Member provided the following information about his writing of the RTCC in relation to an Obstruction charge being laid against the Affected Person. The Member advised that:

- He began writing the RTCC on December 29, 2023, and completed it in one sitting.
- He completed it on that date as he had gathered enough guidance from supervisors and had returned from leave over Christmas.
- He indicated he had a diary date assigned for this file (usually 30 days from the incident) but could not recall if it had been extended.
- He spoke to an Acting Sergeant about the file and they agreed there were grounds to arrest the Affected Person but that it would be a good idea to write a RTCC.
- Regarding the delay in arresting the Affected Person the second time, the Affected Person had been arrested without charges, and he wished to discuss with matter with the Acting Sergeant.
- He explained that he did not wait for Crown Counsel to issue a warrant because he believed there were sufficient grounds for arrest and he did not believe it was necessary to wait.
- He was not aware that the arrest of the Affected Person on November 26, 2023, had been submitted to the OPCC as a reportable injury.
- He did not recall receiving any advice about holding a person in custody from the Jail NCO, although he did recall being told shortly thereafter by the Jail NCO that they had spoken to the Crown and the Crown requested the release of the Affected Person on a UTA.
- He explained that he wanted to ensure the Affected Person was fingerprinted and photographed, and once that had occurred he continued to hold the Affected Person as he wanted to assure his attendance in court.

A Further Statement from the Affected Person

80. The Affected Person was unable to be located to provide a further statement.

The Report to Crown Counsel [RTCC] the Member wrote on December 29, 2023 about his arrest of the Affected Person on November 26, 2023

81. In his RTCC the Member referred to the events of November 26, 2023, and the fact that the warrant he relied on was in fact for another person associated to the vehicle for which the Affected Person was the Registered Owner. The Registered Owner was not the subject of an outstanding warrant for driving while prohibited. Furthermore, when the Member saw the warrant on CPIC it appeared that the Affected Person was the subject of the warrant.

The Member's Police Statement regarding the Arrest of the Affected Person on December 29, 2023

82. The Member stated that at 1040 hours on December 29, 2023, he recognized the Affected Person walking on [REDACTED] Avenue. He decided to arrest the Affected Person for Obstruction based on the Affected Person's actions on November 26, 2023. The Member and another police officer made contact with the Affected Person, handcuffed him, and placed him in the back of the Member's police car. The Member read him his s. 10(a) and (b) Charter rights, and the Affected Person made a number of comments. When asked if he wanted to call a lawyer, the Affected Person said, "This is not Nazi Germany, you cannot just handcuff people in the street". When asked if he understood the official warning, the Affected Person said, "You cannot take the law into your own hands."

ANALYSIS AND FINDINGS REGARDING THE DECEMBER 29, 2023 ARREST

V. *Abuse of Authority, constituting oppressive conduct towards the Afflicted Person by the Member, intentionally or recklessly making an arrest of the Affected Person without good or sufficient cause on December 29, 2023, for the alleged offence of Obstruction of a Police Officer from the prior arrest on November 26, 2023 (s. 77(3)(a)(i)*

83. In my view, the actions of the Member on this occasion, when considered with the other available evidence appear sufficient to substantiate this allegation. As the evidence indicates the Member submitted a RTCC on December 29, 2023, seeking that a charge of Obstruction of a Police Officer (s. 129 of the *Criminal Code*) be laid in

relation to the conduct of the Affected Person on November 23, 2023, when the Member arrested him and no warrant existed.

84. On the same day that the Member submitted the RTCC, and prior to receiving information confirming the approval of Crown Counsel with regard to the laying of the charge, the Member effected the arrest of the Affected Person without process being issued and in particular, without a warrant for the Affected Person's arrest. With the assistance of a fellow officer, the Member arrested the Affected Person and took him into custody. The Member appears to have been instrumental in the Affected Person being kept in custody until he could appear before a Justice to be released. That same day Crown Counsel did not approve the charge and directed that the Affected Person be released.

85. I have reviewed the provisions of s. 495(2) of the *Criminal Code*. It appears that none of them support 1) the Affected Person being arrested; or 2) kept in custody pending release. With regard to 2), there is no evidence before me to support keeping the Affected Person in custody as there was no need to establish the identity of the Affected Person, no need to secure evidence of or relating to the offence, or a need to prevent the continuation or repetition of the offence or the continuation of another offence. There was also nothing to indicate that the Affected Person, if not arrested, would fail to attend court.

86. Thus, it appears that the evidence is sufficient to support the allegation made and I make that determination. This appears to constitute abuse of authority as oppressive conduct towards a member of the public by the Member intentionally making an arrest without good and sufficient case. Therefore, I find that this allegation of misconduct is substantiated.

Conclusion

87. For these reasons I make the following findings in relation to the allegations of misconduct in relation to the Member:

- I. ***Abuse of Authority***, constituting oppressive conduct towards the Affected Person, by the Member **intentionally or recklessly making an arrest of the Affected Person without good or sufficient cause on November 26, 2023 (s. 77(3)(a)(i))**:
Substantiated

- II. ***Abuse of Authority***, constituting oppressive conduct towards the Affected Person, by the Member, in the performance of his duties, **intentionally or recklessly, using unnecessary force when he arrested the Affected Person on November 26, 2023 (s.77(3)(a)(ii)(A))**
Substantiated

- III. ***Neglect of Duty***, by the Member, on November 26, 2023, for his **failure to notify his supervisor, without good and sufficient cause, as soon as practicable of his use of force in relation to the Affected Person** by way of strikes to the head and body of the Affected Person, and his deployment of OC spray to subdue the Affected Person as required by the APD Policy and Procedure on Use of Force Operations II.H.010, p. 5, para. 33:
Unsubstantiated

- IV. ***Neglect of Duty***, by the Member, on November 26, 2023, for his **failure to photograph the injuries of the Affected Person sustained in the arrest**, in accordance with his duty to do so as set out in the APD Policy and Procedure on Use of Force Operations II.H.010, p. 5, para. 34:
Substantiated

- V. ***Abuse of Authority***, constituting oppressive conduct towards the Affected Person, by the Member, **intentionally or recklessly making an arrest of the Affected Person without good or sufficient cause on December 29, 2023, for the alleged offence of Obstruction of a Police Officer from the prior arrest on November 26, 2023 (s.77(3)(a)(i)):**
- Substantiated**

The Matter of a Prehearing Conference

88. I have decided it is not appropriate in this case to offer a prehearing conference to the Member. Section 120(3)(b) permits me to decline to offer a prehearing conference on two grounds: 1) that the evidence against the Member is sufficiently serious to warrant dismissal or reduction in rank, or 2) that a prehearing conference would be contrary to the public interest. In the present case I find that both grounds apply.

Next Steps

89. Having conducted the review referred to in s. 117(7) of the *Act* I hereby notify the relevant parties of the next steps pursuant to s. 117(8) of the *Act*.
90. In accordance with s. 117(9) I will become the disciplinary authority in respect of the matter and must convene a disciplinary hearing.
91. Section 118(1) of the *Act* provides that a discipline hearing concerning the apparently substantiated misconduct allegations must be convened within 40 business days of this decision. The Member may, pursuant to s. 119(1), file with the Disciplinary Authority a request to call and examine or cross-examine one or more of the witnesses listed in the Final Investigation Report.
92. Having found, based on my review of the evidence contained in the material before me, that four of the five alleged misconducts alleged against the Member are supported, insofar as the evidence appears sufficient to establish those allegations, this matter will

be dealt with as set out above and in accordance with the applicable provisions of the Act. Thank you.

Dated the 2nd day of June, 2025, at Kelowna, British Columbia

The Hon. Elizabeth A. Arnold-Bailey

The Honourable Elizabeth A. Arnold-Bailey
(Supreme Court of British Columbia, Ret'd)